

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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<p>CHARLES FRATZ, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,</p> <p>Plaintiff,</p> <p>vs.</p> <p>CAPITAL ONE BANK (USA) N.A. AND GOLDMAN &amp; WARSHAW, P.C.,</p> <p>Defendant.</p>	<p>Hon. Mitchell S. Goldberg Civil Action No.: 11-CV-02577-MSG</p>
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**DEFENDANT'S, GOLDMAN & WARSHAW, P.C., RESPONSE TO THE PLAINTIFF'S  
MOTION FOR CLASS CERTIFICATION**

Defendant, Goldman & Warshaw, P.C., (hereinafter referred to as "Goldman") by and through its counsel Joann Needleman, Esq., and Donald S. Maurice, Esq., of the law firm of Maurice & Needleman, P.C., responds to the Plaintiff's Motion for Class Certification and respectfully requests this Court to deny same. In support hereof, Goldman responds as follows:

1. Plaintiff's complaint speaks for itself.
2. The subsections of the FDCPA speak for themselves.
3. Denied. Whether Goldman is a debt collector is a conclusion of law to which no response is required. The remainder of the allegations is denied. As was shown by Goldman's response to the Plaintiff's Motion for Summary Judgment as well as Goldman's Cross-Motion for Summary Judgment, Plaintiff has failed to come forward with any evidence to proof its claims as asserted.

4. Denied. Goldman's defenses are set forth in its response to the Plaintiff's Motion for Summary Judgment as well as in its Cross-Motion for Summary Judgment. Plaintiff has failed to come forward with any evidence to proof its claims as asserted.

5. Denied. As was shown in Goldman's response to the Plaintiff's Motion for Summary Judgment as well as Goldman's Cross-Motion for Summary Judgment, Plaintiff has failed to come forward with any evidence to proof its claims as asserted.

6. Denied. This allegation is a conclusion of law to which no response is required. By way of a further response and as was shown in Goldman's response to the Plaintiff's Motion for Summary Judgment as well as Goldman's Cross-Motion for Summary Judgment, Plaintiff has failed to come forward with any evidence to proof its claims as asserted.

7. Denied for the reasons set forth in Goldman's Memorandum of Law in Opposition to Plaintiff's Class Certification Motion.

8. Denied. Plaintiff engaged in no class discovery and any allegation that discovery was somehow limited is disingenuous. By way of a further response and as will be shown in Goldman's Memorandum in Opposition to Plaintiff's Class Certification Motion, the dockets produced by Plaintiff, fail to show whether any of these cases involved used a Customer Agreement as evidence in an arbitration, were the result of a dispute regarding a credit card at all or that Goldman was the counsel of record for Capital One. Plaintiff's evidence is without any merit as to numerosity.

9. Denied. This allegation is a conclusion of law to which no response is required and denied for the reasons set forth in Goldman's Memorandum of Law in Opposition to Plaintiff's Class Certification Motion.

10. Denied. This allegation is a conclusion of law to which no response is required and denied for the reasons set forth in Goldman's Memorandum of Law in Opposition to Plaintiff's Class Certification Motion.

11. Denied for the reasons that Plaintiff has not proven the existence of a class and for the reasons set forth in Goldman's Memorandum of Law in Opposition to Plaintiff's Class Certification Motion.

13. Denied for the reasons Plaintiff is an inadequate class representative and for the set forth in Goldman's Memorandum of Law in Opposition to Plaintiff's Class Certification Motion.

14. Denied. This allegation is a conclusion of law to which no response is required.

15. No response required.

WHEREFORE, Defendant, Goldman & Warshaw, P.C., respectfully requests that this Court deny Plaintiff's Motion for Class Certification.

Respectfully Submitted,  
**MAURICE & NEEDLEMAN, P.C.**

/s/ *JOANN NEEDLEMAN*

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JOANN NEEDLEMAN (74276)

/s/ *DONALD S. MAURICE*

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Date: December 15, 2011